REMARKS

Applicants thank the Examiner for the consideration shown to the present application thus far. Claims 1, 3, 5, and 10-15 have been indicated by the Examiner to be allowable. Applicants also thank the Examiner for the indication of allowable subject matter.

Double Patenting – 35 USC 101

Claim 10 has been provisionally rejected under 35 USC 101 as claiming the same invention as that of claim 53 of co-pending Application No. 10/606,137. Claim 10 and claim 53, which is dependent on claim 51, are reproduced below.

> 10. A method for reducing the level of acrylamide in a heated corn-based food products comprising:
>
> (1) adding the asparagine-reducing enzyme to a corn-based food material, wherein said corn-based food material comprises asparagine;
>
> (2) optionally mixing the enzyme with the corn-based food material;
>
> (3) allowing a sufficient time for the enzyme to react with the asparagine whereby at least a portion of the asparagine is removed or is converted to a different substance;
>
> (4) optionally deactivating or optionally removing the enzyme; and
>
> (5) heating the corn-based food material to form the heated corn-based food product.
>
> 51. A method for the reduction of acrylamide in thermally processed foods comprising the steps of:
>
> (a) providing a food material that contains free asparagine;
>
> (b) adding an asparaginase solution to the food material, thereby inactivating asparagine in the asparagine-containing food material;

(c) using said food material as a component in a food mixture; and

(d) heating said food mixture to form a thermally processed food product.

53. The method of reducing acrylamide formation in thermally processed foods of Claim 51 wherein the food material is selected from the group comprising rice, wheat, corn, potato and oats.

Applicants submit that claim 10 and claim 53 recite subject matter that can be considered not identical subject matter. For example, Applicants submit that "corn-based food product" from claim 10 can be different than "food material ... selected from the group comprising ... corn" in claim 53. Furthermore, "asparagine-reducing enzyme" in claim 10 can be different than "asparaginase solution" in claim 53.

Thus, Applicants respectfully request the double patenting rejection under 35 USC 101 be reconsidered and withdrawn.

It should also be noted that in the discussion below with respect to the non-statutory double patenting rejection, a Terminal Disclaimer is being submitted herewith over copending Application No. 10/606,137, which is the subject of the rejection under 35 USC 101.

Double Patenting – Non-Statutory

Claims 1, 3, 5, and 10-15 remain provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-32 and 42-50 of co-pending Application No. 10/606,137.

Claims 11-15 remain provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 6,989,167.

Claims 11-15 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 64-70 of co-pending Application No. 11/090,570.

Please find included herewith an appropriately filed Terminal Disclaimer listing the above references. Reconsideration and withdrawal of the rejections are respectfully requested.

CONCLUSION

The Examiner's rejection based on 35 U.S.C. § 103 and the judicially created doctrine of double patenting have all been addressed. Moreover, it is believed that all of these rejections have been overcome. Applicants respectfully request reconsideration and issuance of the present application.

Respectfully submitted,
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